

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Everett L. Thomas and Martha A.
Thomas,

Plaintiffs,

v.

Wells Fargo Bank, N.A.; Wells Fargo
Home Mortgage; Barrett Daffin
Frappier & Weiss, LLP ,

Defendants.

Case No.: 15CV2344-GPC(JMA)

**ORDER GRANTING
DEFENDANT'S MOTION TO
COMPEL DISCOVERY
RESPONSES [DOC. NO. 41]**

On January 3, 2017, Defendant Wells Fargo Bank, N.A., filed a discovery motion, requesting the Court compel Plaintiffs Everett L. Thomas and Martha A. Thomas respond to Defendant's discovery requests. [Doc. No. 41.] Although captioned as a Joint Motion for Determination of Discovery Dispute, the motion was actually filed unilaterally by Defendant because counsel for Plaintiffs, Joseph La Costa, Esq., did not respond to Defendant's efforts to obtain Plaintiffs' portion of the discovery motion, as required by the undersigned's Chambers Rules. [*Id.*, *Decl. of David Newman*, ¶ 3.]

The discovery requests at issue are Defendant's first sets of Interrogatories, Requests for Admission, and Requests for Production of

1 Documents, which were served on October 24, 2016. [*Id.*, ¶ 2.] When Plaintiffs
2 failed to provide any responses or objections by the deadline to do so, counsel
3 for Defendant, David Newman, Esq., undertook efforts to discuss the matter with
4 Mr. La Costa, both by telephone and email. [*Id.*] During a telephone call between
5 counsel that occurred on December 12, 2016, Mr. La Costa represented to Mr.
6 Newman he would provide responses without objections by December 16, 2016.
7 [*Id.*]

8 When the responses were still not received, Mr. Newman attempted to
9 correspond further with Mr. La Costa. [*Id.*, ¶ 3.] In an email sent December 21,
10 2016, Mr. Newman informed Mr. La Costa that Defendant would seek judicial
11 intervention, provided him with Defendant's portion of the discovery motion, and
12 requested he provide Plaintiffs' portion of the joint motion by December 31, 2016.
13 [*Id.*] Mr. La Costa did not respond. [*Id.*] On January 3, 2017, having still not
14 received any discovery responses, Plaintiffs' portion of the discovery motion, or
15 any other response from Mr. La Costa, Defendant filed the discovery motion
16 unilaterally. Since the discovery motion was filed, the Court's staff has contacted
17 Mr. La Costa several times by telephone. During these discussions Mr. La Costa
18 did not provide any substantial justification for his clients' failure to timely provide
19 the discovery responses, or indicate his clients oppose the discovery motion.

20 Based on the foregoing, the Court finds good cause to GRANT Defendant's
21 motion to compel. Plaintiffs shall provide full and complete responses, without
22 objections, to Defendant's first sets of Interrogatories, Requests for Admission,
23 and Requests for Production of Documents, and shall produce all responsive
24 documents, by no later than **February 3, 2017**.

25 When a motion to compel discovery is granted, or discovery is provided
26 after its filing, the Court must, after affording an opportunity to be heard, require
27 the party or attorney whose conduct necessitated the motion, or both, pay the
28 movant's reasonable expenses incurred in making the motion unless the failure

1 to provide discovery was substantially justified. Fed. R. Civ. P. 37(a)(5)(A).
2 Defendant has requested the Court impose a sanction of \$1,100 for four hours of
3 attorney time incurred while meeting and conferring (1 hour); drafting the motion
4 and coordinating the filing (2 hours); and attending any hearing (1 hour). [Id., ¶
5 4.] As outlined above, Mr. La Costa and his clients have had ample opportunity
6 to respond to Defendant's motion to compel. A copy of Defendant's portion of
7 what should have been a joint discovery motion was first provided to Mr. La
8 Costa on December 21, 2016. At that time, Plaintiffs could, and should, have
9 contributed to the discovery motion by providing their responsive arguments, as
10 required by the undersigned's Chambers Rules. Instead of availing themselves of
11 their opportunity to be heard, Plaintiffs' counsel failed to respond at all and the
12 discovery motion was eventually filed unilaterally.

13 The discovery motion has now been pending for over three weeks, since
14 January 3, 2017, allowing Plaintiffs another window of opportunity to make their
15 position known to the Court. During this time the Court's staff has participated in
16 multiple telephone conversations about Defendant's motion to compel with Mr.
17 La Costa and, on one occasion, with Mr. La Costa and Mr. Newman. Despite
18 having ample time and opportunity to do so, Plaintiffs, however, still have not
19 taken any steps to oppose the motion to compel and request for sanctions or
20 provide substantial justification for not providing timely discovery responses or
21 responsive documents. The Court, therefore, ORDERS Mr. La Costa and
22 Plaintiffs Everett L. Thomas and Martha A. Thomas compensate Defendant the
23 sum of \$550.00 for the two hours of attorney time incurred by Mr. Newman in

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1 preparing Defendant's discovery motion.¹ The sanction shall be remitted to
2 Defendant no later than **February 10, 2017**.

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4 **IT IS SO ORDERED.**

5 Dated: January 25, 2017

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7 Honorable Jan M. Adler
8 United States Magistrate Judge
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26 ¹ The sanction amount is limited to time Mr. Newman spent preparing the motion. A hearing
27 was not held so the requested sanction award is reduced by the hour Mr. Newman estimated
28 he would have spent in attendance. The hour of time Mr. Newman spent meeting and
conferring with Mr. La Costa regarding the discovery requests is also not included in the
sanction award.